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Office of Thrift Supervision
Department of the Treasury
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This document and any attachments are superseded by (OCC 2007-42).

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MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS

FROM: Lori Quigley 
Managing Director, Supervision

SUBJECT: Regulation R and Bank Brokerage Activities

Regulation R is effective on the first day of an institution's fiscal year beginning after September 30, 2008. For savings associations that utilize a calendar fiscal year, the effective date for Regulation R is January 1, 2009.

Regulation R implements certain broker exceptions for banks and savings associations from the definition of the term "broker" under Section 3(a)(4) of the Securities Exchange Act of 1934 ("Exchange Act"), as amended by the Gramm-Leach-Bliley Act ("GLBA"). Specifically, Regulation R implements the bank broker exceptions relating to third-party networking arrangements, trust and fiduciary activities, deposit "sweep" activities, and custody and safekeeping activities. Regulation R also includes certain exemptions related to foreign securities transactions, non-custodial securities lending transactions conducted in an agency capacity, and the execution of transactions other than through a broker-dealer.

Regulation R was published on October 3, 2007 by The Board of Governors of the Federal Reserve System (Board) and the Securities and Exchange Commission (SEC) - <http://edocket.access.gpo.gov/2007/pdf/07-4769.pdf>. Technical amendments to Regulation R were published on April 17, 2008 - <http://edocket.access.gpo.gov/2008/pdf/E8-8270.pdf>. The Board and the SEC consulted with the Office of Thrift Supervision and the other banking agencies in all phases of the rulemaking. A summary of Regulation R can be located on the OTS web site at <http://files.ots.treas.gov/482067.pdf>.

Section 3(a)(4)(B) of the Exchange Act includes other "broker" exceptions for banks and savings associations. These exceptions include transactions in exempt securities (such as U.S. government securities); certain stock purchase plans; affiliate transactions; private securities offerings; identified banking products; municipal securities; and a de minimis number of other securities transactions. Regulation R does not include implementation provisions related to these

statutory broker exceptions. Savings associations utilizing these exceptions need only look at the language in Section 3(a)(4)(B) of the Exchange Act to ensure compliance.

Savings associations are also reminded that Section 3(a)(5) of the Exchange Act includes bank and savings association exceptions from the definition of “dealer.” Guidance and related exemptions have been published by the Securities and Exchange Commission at 17 C.F.R. §§ 240.3a5-1, 240.3a5-2, 240.3a5-3 and 240.3b-18.

To Ensure Compliance, Savings Associations Should Take the Following Actions

- Determine if the savings association is engaging in any securities activities, particularly any “broker” or “dealer” activities such as acting as trustee or custodian for IRA accounts that are invested in securities, utilizing a networking arrangement to offer securities products to savings association customers, or using trust powers to engage in fiduciary activities;
- Confirm that either: (i) the savings association is conducting the securities activities or (ii) an operating subsidiary or a service corporation that is registered as a broker-dealer is conducting the securities activities. This is especially important for savings associations that have networking arrangements as OTS had previously required, but no longer requires that these activities be conducted in a subordinate entity. OTS published guidance on moving networking arrangements out of subordinate entities (CEO Memorandum #178, July 11, 2003 - <http://files.ots.treas.gov/25178.pdf>).
- Develop written policies and procedures as well as establish an effective training program to ensure compliance with the statutory exceptions in Section 3(a)(4) and Section 3(a)(5) of the Exchange Act as well as Regulation R.
- Adjust risk management, audit and compliance systems to include securities activities.

If you have any questions, please contact Judi McCormick, Director, Trust and Asset Management at (202) 906-5636 or judi.mccormick@ots.treas.gov.